

Politics of Merit
- Robert Maurer
- Harper & Row
- Alfred A. Knopf

by Robert Maurer

AMERICAN REPORT
2004/10/13
1-15 JAN 1973

CENSORING THE PRESS

P- Maurer, Robert
CIA 1.01 McCone, John
CIA 1.04 Marchetti, Victor
P- McGarvey, Patrick
Orig. under Maurer

"One day, I was a Scout Master at one time. But when some of my scouts began to grow up and come back to see me, Eagle Scouts, telling me that they were not going to go into the Army, that they were going to be conscientious objectors, we would sit down and argue, and I would try to defend the U.S. policies in Viet Nam. But it got pretty difficult, and after they would leave, I'd find myself thinking about it, and I didn't like the conclusions I was coming to."

—Victor Marchetti, top C.I.A. intelligence expert for 14 years, on a recent National Educational Television special.

Although New Left spokesmen are excelling in radicalizing thousands of the young, the greater cause for concern is the hostility of respectable liberals and social reformers. It is the sum total of their views and influence which could indeed fatally weaken or destroy the system."

—Lewis F. Powell, Jr., in a confidential memo written to the U.S. Chamber of Commerce (Aug. 23, 1971) two months prior to his nomination as U.S. Supreme Court Justice.

NEW YORK CITY—Back in the spring of 1964, Random House stood firm against the Central Intelligence Agency's attempt to stop publication of the first expose of the C.I.A.'s clandestine operations.

The C.I.A. had obtained a copy of the bound pages of *The Invisible Government* prior to publication. (This year the C.I.A. also clandestinely obtained the outline of a proposed book by Victor Marchetti, a former top staff member in the agency.) Such domestic activities, however, are specifically prohibited by the legislative act that established the C.I.A. But the agency got away with it.

After reviewing the bound pages, John McCone, then C.I.A. director, made several phone calls to Random House contending that the book contained a number of errors.

One, Two, Many Editions

The thrust of McCone's calls, it was assumed at the time, was to convince Random House not to publish the book. After the authors David Wise and Tom Ross backed by the publisher, reaffirmed the accuracy of the text as it stood, the agency, through an intermediary, informed the late Bennett Cerf (founder and chairman of the board of Random House) that it had studied the possibility of buying up the entire first edition. According to a reliable source, Cerf responded that the agency could buy up the first edition, but

Random would print a second—and third edition if necessary.

Although the C.I.A. neither stopped the book, nor bought up the first edition, the publicity surrounding its attempts to do so contributed to *The Invisible Government* becoming a number one bestseller.

(But the C.I.A. didn't rest there. According to author Wise, the agency prepared a lengthy analysis of the book, attempting to refute it point by point, classified this document, and circulated it only within the agency.)

In 1964, when most of the country believed in the campaign rhetoric of Lyndon Johnson, it was a frightening enterprise to write and publish such a book. And when, however ineffectively, the C.I.A. brought pressure to bear, both authors and publisher stood firm in the best tradition of freedom of the press.

Now, however, those C.I.A. telephone calls have given way, in some important cases, to legal initiatives (and the spectre of legal cases) to censor books, or parts of them, directly. This, in turn, is having a chilling effect on the book industry through self-policing, editors are thinking twice about publishing sensitive material. The Government has decidedly won a few rounds this time.

Over the last two months this reporter has spoken with some two dozen editors from various publishing houses, large and small, to gain a sense of the present climate in the industry following several cases involving Government pressure to limit First Amendment rights. In summary, the following are the more publicized cases, as well as recent Supreme Court decisions, effecting the public's right to know:

A Boston grand jury subpoenaed the bank records of the Unitarian Universalist Association after its publishing arm, Beacon Press, issued the four-volume Gravel edition of the "Pentagon Papers." (More later.)

Last May 15 the U.S. Court for the Eastern District of Virginia ruled in the Government's favor to stop Victor Marchetti from submitting any manuscript to his publisher unless he first submitted it to the C.I.A. (More later.)

Prior to Publication

Harper & Row, against the initial protest of author Alfred McCoy, acceded to the C.I.A.'s desire to see galleys of *The Politics of Merit* in Southeast Asia, under certain conditions, prior to publication. Harper & Row wanted to avoid possible litigation.

On June 29 the Supreme Court, in a 5 to 4 decision, ruled that the Government's attempt to censor a Congressman's immunity, guaranteed in

the "speech and debate clause" of the Constitution, while extending to his aides, extends only to the "legislative process," i.e., his actions on the floor of Congress and in committee.

Otherwise he is subject to grand jury investigation in the act of gathering information from private citizens, or in the act of attempting to disseminate information beyond the Congressional Record, as Gravel did in seeking a publisher for the "Pentagon Papers" in order to reach the widest possible audience.

Also on June 29, the Supreme Court ruled in the case of New York Times reporter Earl Caldwell that reporters must appear before grand juries when called to testify regarding the sources of their news stories. (An Appeals Court ruled recently along the same lines, refusing immunity to scholars, in the case of Samuel Popkin, a Harvard professor.)

In late November the Supreme Court issued new rules of evidence in which, among other things, the Government may refuse to give evidence and prevent any person from giving evidence in court if such testimony is likely to reveal a "secret of state" or "official information."

The Costs of Controversy

The random sampling of editors' opinions has revealed both a tougher and a more cautious attitude toward publishing sensitive material that might embarrass the Government. Gene Rachlis, editor-in-chief at Bobbs-Merrill, said that even though the Harper & Row affair had set a bad precedent, "people will be tougher in the industry from now on." Tony Clark, an editor at Atheneum, thought that most editors were "anything but intimidated" by those recent events.

Although every editor contacted was of this general view, John Simon of Random House pointed to the \$50,000 or so that a publisher might expect to spend to defend a book against Government legal action. This price-tag would have a "chilling effect" on a publisher's decision to go ahead with a book likely to embarrass the Government.

Simon thought that even the consideration of such a cost factor, as well as staff and lawyers' time in defending the book, especially if the book might be less than a potential bestseller, meant the Government had "already won" the first round.

Disenchantment with the Indochina war, Simon went on, has had an effect in the publishing industry. A general atmosphere